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HOUSE BILL 535

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO HEALTH FACILITIES; REQUIRING COORDINATED
INVESTIGATION OF ALLEGATIONS OF ABUSE, NEGLECT AND
EXPLOITATION; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-1-5 NMSA 1978 (being Laws 1973,
Chapter 359, Section 5, as amended) is amended to read:

"24-1-5. LICENSURE OF HEALTH FACILITIES--HEARINGS--
APPEALS. --

A. [~~No~~] A health facility shall not be operated
without a license issued by the department. If a health
facility is found to be operating without a license, in order
to protect human health or safety, the secretary may issue a
cease-and-desist order. The health facility may request a
hearing that shall be held in the manner provided in this

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1 section. The department may also proceed pursuant to the
2 Health Facility Receivership Act.

3 B. The department is authorized to make inspections
4 and investigations and to prescribe [~~regulations~~] rules it
5 deems necessary or desirable to promote the health, safety and
6 welfare of persons using health facilities.

7 C. Except as provided in Subsection F of this
8 section, upon receipt of an application for a license to
9 operate a health facility, the department shall promptly
10 inspect the health facility to determine if it is in compliance
11 with all rules of the department. Applications for hospital
12 licenses shall include evidence that the bylaws or rules of the
13 hospital apply equally to osteopathic and medical physicians.
14 The department shall consolidate the applications and
15 inspections for a hospital that also operates as a hospital-
16 based primary care clinic.

17 D. Upon inspection of [~~any~~] a health facility, if
18 the department finds [~~any~~] a violation of its rules, the
19 department may deny the application for a license, whether
20 initial or renewal, or it may issue a temporary license. A
21 temporary license shall not be issued for a period exceeding
22 one hundred twenty days, nor shall ~~more~~ than two consecutive
23 temporary licenses be issued.

24 E. A one-year nontransferable license shall be
25 issued to any health facility complying with all rules of the

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1 department. The license shall be renewable for successive one-
2 year periods, upon filing of a renewal application, if the
3 department is satisfied that the health facility is in
4 compliance with all rules of the department or, if not in
5 compliance with a rule, has been granted a waiver or variance
6 of that rule by the department pursuant to procedures,
7 conditions and guidelines adopted by rule of the department.

8 Licenses shall be posted in a conspicuous place on the licensed
9 premises, except that child-care centers that receive no state
10 or federal funds may apply for and receive from the department
11 a waiver from the requirement that a license be posted or kept
12 on the licensed premises.

13 F. [~~Any~~] A health facility that has been inspected
14 and licensed by the department and that has received
15 certification for participation in federal reimbursement
16 programs and that has been fully accredited by the joint
17 commission on accreditation of health care organizations or the
18 American osteopathic association shall be granted a license
19 renewal based on that accreditation. Health facilities
20 receiving less than full accreditation by the joint commission
21 on the accreditation of health care organizations or by the
22 American osteopathic association may be granted a license
23 renewal based on that accreditation. License renewals shall be
24 issued upon application submitted by the health facility upon
25 forms prescribed by the department. This subsection does not

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1 limit in any way the department's various duties and
2 responsibilities under other provisions of the Public Health
3 Act or under any other subsection of this section, including
4 any of the department's responsibilities for the health and
5 safety of the public.

6 G. The department may charge a reasonable fee not
7 to exceed three dollars (\$3.00) per bed for an inpatient health
8 facility or one hundred dollars (\$100) for any other health
9 facility for each license application, whether initial or
10 renewal, of an annual license or the second consecutive
11 issuance of a temporary license. Fees collected shall not be
12 refundable. All fees collected pursuant to licensure
13 applications shall be deposited with the state treasurer for
14 credit to the general fund.

15 H. The department may revoke or suspend the license
16 of a health facility or may impose on a health facility an
17 intermediate sanction and a civil monetary penalty provided in
18 Section 24-1-5.2 NMSA 1978 after notice and an opportunity for
19 a hearing before a hearing officer designated by the department
20 to hear the matter and, except for child-care centers and
21 facilities, may proceed pursuant to the Health Facility
22 Receivership Act upon a determination that the health facility
23 is not in compliance with any rule of the department. If
24 immediate action is required to protect human health and
25 safety, the secretary may suspend a license or impose an

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1 intermediate sanction pending a hearing, provided the hearing
2 is held within five working days of the suspension or
3 imposition of the sanction, unless waived by the licensee, and,
4 except for child-care centers and facilities, may proceed ex
5 parte pursuant to the Health Facility Receivership Act.

6 I. The department shall schedule a hearing pursuant
7 to Subsection H of this section if the department receives a
8 request for a hearing from a licensee:

9 (1) within ten working days after receipt by
10 the licensee of notice of suspension, revocation, imposition of
11 an intermediate sanction or civil monetary penalty or denial of
12 an initial or renewal application;

13 (2) within four working days after receipt by
14 the licensee of an emergency suspension order or emergency
15 intermediate sanction imposition and notice of hearing if the
16 licensee wishes to waive the early hearing scheduled and
17 request a hearing at a later date; or

18 (3) within five working days after receipt of
19 a cease-and-desist order.

20 The department shall also provide timely notice to the
21 licensee of the date, time and place of the hearing, identity
22 of the hearing officer, subject matter of the hearing and
23 alleged violations.

24 J. ~~Any~~ A hearing held pursuant to provisions of
25 this section shall be conducted in accordance with adjudicatory

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1 hearing rules and procedures adopted by ~~[regulation]~~ rule of
2 the department. The licensee has the right to be represented
3 by counsel, to present all relevant evidence by means of
4 witnesses and books, papers, documents, records, files and
5 other evidence and to examine all opposing witnesses who appear
6 on any matter relevant to the issues. The hearing officer has
7 the power to administer oaths on request of any party and issue
8 subpoenas and subpoenas duces tecum prior to or after the
9 commencement of the hearing to compel discovery and the
10 attendance of witnesses and the production of relevant books,
11 papers, documents, records, files and other evidence.

12 Documents or records pertaining to abuse, neglect or
13 exploitation of a resident, client or patient of a health
14 facility or other documents, records or files in the custody of
15 the human services department or the office of the state long-
16 term care ombudsman at the state agency on aging that are
17 relevant to the alleged violations are discoverable and
18 admissible as evidence in any hearing.

19 K. Any party may appeal the final decision of the
20 department pursuant to the provisions of Section 39-3-1.1 NMSA
21 1978.

22 L. ~~[Every]~~ A complaint about a health facility
23 received by the department pursuant to this section shall be
24 promptly investigated to substantiate the allegation and to
25 take appropriate action if substantiated. ~~[The department~~

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1 ~~shall coordinate with the human services department, the office~~
2 ~~of the state long term care ombudsman at the state agency on~~
3 ~~aging and any other appropriate agency to develop a joint~~
4 ~~protocol establishing responsibilities and procedures to assure~~
5 ~~prompt investigation of complaints, including prompt and~~
6 ~~appropriate referrals and necessary action regarding~~
7 ~~allegations of abuse, neglect or exploitation of residents,~~
8 ~~clients or patients in a health facility.] The department~~
9 shall develop a long-term care protocol in conjunction with the
10 human services department, the medicaid fraud control unit of
11 the office of the attorney general, the protective services
12 division of the children, youth and families department, the
13 office of the state long-term care ombudsman and other
14 appropriate agencies to ensure the health, safety and rights of
15 individuals in long-term care settings. The long-term care
16 protocol shall require:

17 (1) cross-reference among agencies pursuant to
18 this subsection of an allegation of abuse, neglect or
19 exploitation;

20 (2) an investigation of an allegation
21 involving physical abuse or life-threatening situations within
22 eight hours of receipt of the complaint;

23 (3) an investigation of an allegation of
24 neglect when actual harm has occurred to the patient within
25 twenty-four hours of the complaint;

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1 (4) an investigation in accordance with the
2 policies of the department of allegations of substandard
3 quality care and financial exploitation;

4 (5) an agency to share its investigative
5 information and findings with other agencies, unless otherwise
6 prohibited by law; and

7 (6) require the receiving agency to accept the
8 information provided pursuant to Paragraph (5) of this
9 subsection as evidence to initiate and conduct investigations.

10 M ~~[Complaints]~~ A complaint received by the
11 department pursuant to this section shall not be disclosed
12 publicly in a manner as to identify any individuals or health
13 facilities if upon investigation the complaint is
14 unsubstantiated.

15 N. Notwithstanding any other provision of this
16 section, ~~[where]~~ when there are reasonable grounds to believe
17 that ~~[any]~~ a child is in imminent danger of abuse or neglect
18 while in the care of a child-care facility, whether or not
19 licensed, or upon the receipt of a report pursuant to Section
20 32A-4-3 NMSA 1978, the department shall consult with the owner
21 or operator of the child-care facility. Upon a finding of
22 probable cause, the department shall give the owner or operator
23 notice of its intent to suspend operation of the child-care
24 facility and provide an opportunity for a hearing to be held
25 within three working days, unless waived by the owner or

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1 operator. Within seven working days from the day of notice,
2 the secretary shall make a decision, and, if it is determined
3 that any child is in imminent danger of abuse or neglect in the
4 child-care facility, the secretary may suspend operation of the
5 child-care facility for a period not in excess of fifteen days.
6 Prior to the date of the hearing, the department shall make a
7 reasonable effort to notify the parents of children in the
8 child-care facility of the notice and opportunity for hearing
9 given to the owner or operator.

10 0. Nothing contained in this section or in the
11 Public Health Act shall authorize either the secretary or the
12 department to make any inspection or investigation or to
13 prescribe any [~~regulations~~] rules concerning group homes as
14 defined in Section 9-8-13 NMSA 1978 except as are reasonably
15 necessary or desirable to promote the health and safety of
16 persons using group homes. "